

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt the rules cited as 10A NCAC 27I .0601 - .0609.

Proposed Effective Date: *October 1, 2006*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): A person may demand a public hearing on the proposed rules by submitting a request in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, by May 2, 2006.*

Reason for Proposed Action: *To provide non-Medicaid eligible consumers opportunities to appeal decisions by area/county programs to deny requests for services, suspend services, reduce services or terminate services to the Director of DMH/DD/SAS. The rule is required by G.S. 143B-147 (a)(9). The rule establishes filing requirements as well as procedures for a DMH/DD/SAS panel hearing decision and requires a final decision to be issued by the area/county program.*

Procedure by which a person can object to the agency on a proposed rule: *The objection, reasons for the objection and the clearly identified portion of the rule to which the objection pertains, may be submitted in writing to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018.*

Comments may be submitted to: *Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 715-2780, fax (919) 733-1221, email cindy.kornegay@ncmail.net*

Comment period ends: *June 16, 2006*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

- ☒ **State**
- ☒ **Local**
- ☐ **Substantive** (>\$3,000,000)
- ☐ **None**

CHAPTER 27 – MENTAL HEALTH, COMMUNITY FACILITIES AND SERVICES

SUBCHAPTER 27I - AREA AUTHORITY OR COUNTY PROGRAM REQUIREMENTS

SECTION .0600 - NON-MEDICAID APPEAL PROCESS

10A NCAC 27I .0601 SCOPE

- (a) The rules of this Section shall govern appeals made to the Division of decisions made by an area authority or county program affecting a non-Medicaid eligible client.
- (b) A non-Medicaid eligible client may appeal to the Director the review decision of an area authority or county program to deny, reduce, suspend, or terminate a non-Medicaid state funded service.
- (c) An appeal shall be filed with the Division only after a client has received a review decision from the area authority or county program.
- (d) Nothing in these rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal decisions of third party payers to the Division.
- (e) As set forth in G.S. 143B-147(a)(9), nothing in these rules shall be interpreted as granting a non-Medicaid eligible client the right to appeal the findings of the Division by requesting a contested case hearing pursuant to G.S. 150B.
- (f) There shall be no reprisal or retaliation to anyone who is a party to an appeal.
- (g) The area authority or county program may authorize interim services until the final written decision as set forth in Rule .0609 of this Section is reached.

Authority G.S. 143B-147.

10A NCAC 27I .0602 DEFINITIONS

As used in the rules in this Section, the following terms shall have the meanings specified:

- (1) "Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.
- (2) "Division" means the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

Authority G.S. 143B-147.

10A NCAC 27I .0603 FILING REQUIREMENTS

- (a) An appeal shall be filed with the Division no later than 11 calendar days from the date of the area authority or county program written review decision.
- (b) The appeal shall include a copy of the area authority or county program review decision and a request for appeal on a form provided by the Division.
- (c) A verbal appeal shall not be accepted.

Authority G.S. 143B-147.

10A NCAC 27I .0604 CHANGE IN CLIENT CONDITION

If the client's medical condition changes relative to the service under appeal, the appeal shall be returned to the area authority or county program for review.

Authority G.S. 143B-147.

10A NCAC 27I .0605 INITIAL RESPONSE TO A DMH/DD/SAS APPEAL

- (a) The Director shall screen the request for appeal to the Division to determine:
 - (1) if the appeal was reviewed by the area authority or county program according to the area authority or county program policy and procedures; and
 - (2) if the appeal includes the denial, reduction, suspension or termination of a non-Medicaid state funded service.
- (b) The Director shall send an acknowledgement letter to the client and the area authority or county program within 5 business days of receipt of the request for appeal to the Division.
- (c) The acknowledgement letter shall specify whether the appeal has been accepted or not. The Division shall accept an appeal if it meets the standards as set forth in Paragraph (a) of this Rule.
- (d) The Director shall notify the area authority or county program and the client whose appeal is accepted for review to forward all documentation considered during the area authority or county program review to the Division no later than 10 calendar days from the date of the acknowledgement letter. The acknowledgment letter shall advise the parties that a panel will be convened to conduct a hearing.
- (e) An appeal that does not meet the criteria as set forth in Paragraph (a) of this Rule shall be returned to the client as disqualified with an explanation of the basis for disqualification.
- (f) The area authority or county program shall review the appeal, if the appeal made to the Division is disqualified on the basis of not having been reviewed according to the area authority or county program's policy and procedures.
- (g) The client shall have 11 calendar days from the date of the area authority or county program review decision to resubmit the appeal to the Division.

Authority G.S. 143B-147.

10A NCAC 27I .0606 HEARING SCHEDULE AND COMPOSITION OF THE PANEL

- (a) The Director shall convene a five member panel to conduct a hearing for an appeal that is accepted in accordance with the requirements of Rule .0605 of this Section.
- (b) The panel members shall consist of the following:
 - (1) a provider agency representative who meets the following requirements:
 - (A) the representative shall be from a provider agency that is not be a party to the appeal; and
 - (B) the representative shall have clinical expertise in the disability area pertinent to the appeal;
 - (2) an employee of an area authority or county program who meets the following requirements:
 - (A) the employee shall be from an area authority or county program that is not a party to the appeal; and
 - (B) the employee shall have clinical expertise in the disability area pertinent to the appeal;
 - (3) two individuals who are members of a consumer and family advisory committee who is not a party to the appeal; and
 - (4) an employee of the Division.
- (c) The employee of the Division shall serve as the chairperson of the panel and shall be a voting member in the case of a tie.
- (d) The Director shall forward the record on appeal and all supplemental documentation to the chairperson of the panel within 5 days of receipt thereof.
- (e) The Director shall provide a copy of applicable law, policy, and procedures to the chairperson of the panel.
- (f) The chairperson shall schedule a panel hearing including designation of a time and place.
- (g) The chairperson shall notify the client, other panel members and the area authority or county program of the time and place no less than 15 calendar days prior to the date of the hearing.

Authority G.S. 143B-147.

10A NCAC 27I .0607 PANEL HEARING PROCEDURES

- (a) The chairperson of the panel:
 - (1) shall convene the hearing at the prearranged time and place;
 - (2) may afford the opportunity for rebuttal and summary comments to either of the presenting parties; and
 - (3) shall conduct proceedings in an orderly manner.
- (b) The panel:
 - (1) may limit the total number of persons presenting for the client and area authority or county program; and
 - (2) may impose time limits for presentations.
- (c) Either party may be represented by a person or attorney of their choice.
- (d) Prior to the hearing, the client and the area authority or county program shall:
 - (1) specify by name and position all individuals who will be present for the hearing;
 - (2) provide the panel with requested information; and
 - (3) when applicable, ensure that representatives of the parties shall be present at the hearing.
- (e) Any member of the panel may address questions to either party.
- (f) The panel may obtain any form of technical assistance or consultation relevant to the appeal.
- (g) No transcript shall be made and no party shall be allowed to record the proceeding. The panel may choose to record the proceeding for its own use. A tape so made shall be destroyed after the panel issues its decision.
- (h) Witnesses shall not be sworn before testifying.

Authority G.S. 143B-147.

10A NCAC 27I .0608 PANEL DECISION FINDINGS

- (a) The panel findings and decisions are based on the record and any new evidence that would be material to the issues on appeal.
- (b) The standard of review for the panel is whether the decision of the area authority or county program is supported by evidence presented.
- (c) The panel shall vote on each specific item being appealed.
- (d) Findings and decisions of the panel shall be by majority vote.
- (e) Any decision may be rescheduled for a subsequent meeting if the panel determines that it lacks sufficient information to render a decision at the initial hearing.
- (f) All panel findings and decisions shall be reached and sent in writing within 60 days of the written request for appeal to the client, the area authority or county program and the Director.

Authority G.S. 143B-147.

10A NCAC 27I .0609 FINAL WRITTEN DECISION

- (a) Upon receipt of the panel's findings and decisions, the area authority or county program shall issue a final decision based on those findings. The area authority or county program shall issue the decision in writing within 10 days of receipt of the panel's findings and decisions.
- (b) Neither the panel findings and decisions nor the area authority or county program final decision shall be interpreted as an agency decision granting a non-Medicaid eligible client the right to appeal by requesting a contested case hearing pursuant to G.S. 150B.

Authority G.S. 143B-147.